IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Election Petition No. 16 of 2002

Baldev Singh Mann ...Petitioner

Versus

Surjit Singh Dhiman ...Respondent.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Mr. Nirmal Singh, Advocate,
for the petitioner.

Mr. S.P. Jain, Senior Advocate, with
Mr. Dheeraj Jain and Mr. Vijay Chaudhary, Advocates,
for the respondent.

K.S.GAREWAL, J.

This election petition was filed by the defeated candidate to challenge the election to 87-Dirba (Punjab) Assembly Constituency which was held on February 13, 2002.

ELECTION PROGRAMME

January 18	Baldev Singh Mann filed his nomination papers as candidate of Shiromani Akali Dal (B).
January 22	Surjit Singh Dhiman filed his nomination papers as an independent candidate.

January 23	Last date for filing nomination papers
January 25	Scrutiny of nomination papers
January 28	Last date for withdrawal of nomination papers.
February 13	Polling of votes was held from 8 a.m. to 5 p.m. with electronic voting machines.
February 24	Counting of votes

RESULT

Surjit Singh Dhiman	35099 votes
Baldev Singh Mann	34103 votes

ELECTION PETITION

The petition under Sections 80 and 81 read with Sections 98, 99 and 100 of the Representation of People Act, 1951 (hereinafter referred to as **'the Act'**) was presented by Baldev Singh Mann (hereinafter referred to as Mann) at 11.30 a.m. on April 20, 2002, to challenge the election of Surjit Singh Dhiman (hereinafter referred to as Dhiman).

GROUNDS

Mann pleaded that Dhiman's election was liable to be declared void as Dhiman had committed corrupt practices by obtaining and procuring assistance, for the furtherance of the prospects of his election, from Gurbachan Singh Bachhi (hereinafter referred to as Bachhi) and B.S. Shergill (hereinafter referred to as Shergill) who were in the service of the government and were gazetted officers.

According to Mann, Bachhi was Administrative Member of

Punjab State Electricity Board. He was appointed on December 24, 2001 and belonged to Bhattiwal Khurd, a village falling in Dirba Constituency.

Shergill was posted as Deputy Director, Panchayats, Punjab and was thus a gazetted officer in the service of the government. He had also remained Additional Deputy Commissioner, Sangrur for 4 years and belonged to Rajpura, a village in Dirba Constituency.

BACHHI'S ROLE

(A) On January 23 Dhiman met Bachhi at the office of XEN, P.S.E.B. Dirba at 7 p.m. in the presence of Kirpal Singh, Sarpanch of Ladbanjara Kalan and Gurtej Singh, Sarpanch of Karyal and had asked Bachhi to help him in the elections. After detailed deliberations Bachhi agreed to help and support Dhiman. From January 24-26, Dhiman and Bachhi were seen by Karnail Singh of Chatha Nanhera, Upinder Singh Honey and Teja Singh Tiwana of Chajjli, Kashmira Singh of Karyal and Darshan Singh, Nazam Singh and Labh Singh of Dirba jointly contacting persons and asking them for their support in the elections. They had also contacted Shamsher Singh of Chatha Nanhera and Natha Singh and Harnek Singh of Chajjli and sought their support. Mann had come to know about these facts on January 27 at 10 a.m. at Dirba from Karnail Singh, Shamsher

Singh, Natha Singh, Harnek Singh, Upinder Singh, Teja Singh Tiwana, Kashmira Singh and others when Parkash Singh Badal, President (SAD), had come to Dirba on January 27, 2002 to address an election rally in support of the petitioner. The petitioner and others complained to him about the activities of Bachhi whereupon Bachhi was expelled from the primary membership of SAD for anti--party activities.

(B) Bachhi alongwith Dhiman visited Rajpura on February 3, 2002 at 11 a.m. and held a meeting at the house of Jarnail Singh where Ram Karan, Sukhdev Singh and others had also assembled. All these persons were voters of Dirba Constituency. Bachhi had taken N.S. Bhullar, an Assistant Engineer (PSEB), with him. The said Bhullar was a relative of Jarnail Singh. Bachhi threatened Jarnail Singh's relatives that in case they did not vote and support Dhiman he would create problems for their relative Bhullar.

(C) On February 4, Mann was informed by Naranjan Singh and Mehar Singh of Kala Jhar that a day earlier at about 2 p.m. Bachhi along with Dhiman had met them and asked for support and vote. Later Mann was also informed by Jasbir Singh, Dhanvir Singh and Gogi Singh that Bachhi had contacted them in

their village on February 3 at 3.30 p.m. and canvassed for votes in favour of Dhiman. Mann in his complaint to the Election Commission had also complained that Bachhi had been canvassing for votes in favour of Dhiman at Channo and Kala Jhar.

(D) On February 5, at 5 p.m. a meeting was convened at Chandani Tourist Complex in Nadampur of voters belonging to Nadampur, Balad Kalan, Phumanwali and Turi. Dhiman was present at this meeting. Some officers of PSEB were also present. Names of some of the persons who were present there were mentioned in the petition, names of the PSEB employees were also mentioned. At this meeting, Bachhi asked the persons present to vote and support Dhiman. Dhiman thanked Bachhi and others for supporting him. Mann came to know about this meeting on February 9 from Gurmeet Singh and Hakam Singh of Nadampur and Labh Singh of Phumanwali and he immediately sent a fax message to Chief Election Commissioner. At the said meeting, Dhiman had introduced some persons of Chatha Nanhera to Bachhi and asked him to help them in getting out-of-turn power connection from the Board. Dhiman told Bachhi that if he is able to release the connection, that would advance his prospects in the elections not only in his own village

but also in the surrounding villages. Bachhi asked Thilu Singh to meet him in the office of SDO (Sub Urban) Suman on February 6 at 10 a.m.

(E) The above meeting was held at the scheduled time and Bachhi directed the PSEB officials to supply material out of turn for giving connections to the villagers of Chatha Nanhera. He also asked Thilu Singh and others of that village to vote and support Dhiman. In the evening at 5 p.m. Bachhi visited Dirba and in the presence of Karnail Singh, Ruldu Singh of Chatha Nanhera informed Dhiman that Thilu Singh's work had been done. Mann came to know about this information from Karnail Singh and Ruldu Singh on February 8 at 5 p.m. at an election rally addressed by Sukhbir Singh Badal at Dirba. Consequently, Mann sent a complaint in this regard to the Chief Election Commissioner.

SHERGILL'S ROLE

As regards Shergill, the petitioner pleaded that on February 3, 2002, Dhiman and Bachhi had visited Rajpura where they held a meeting in Jarnail Singh's house. They also went to Shergill's house who at that time was posted as Deputy Director, Panchayats at Chandigarh. They met Shergill at 12 noon in the presence of Joginder Singh, Nachhattar Singh and Chand Singh of Rajpura. Dhiman requested Shergill to spare some time for helping him in the election as he had sufficient influence in the area. Initially Shergill showed reluctance to do so but the respondent with the

help of Bachhi succeeded in persuading Shergill to render help in the elections. Thereafter of February 4 at 9 a.m. both Shergill and Bachhi went to Barroh and met Amarjeet Singh and asked him to collect prominent persons of the village, whereupon several persons came there and Shergill requested them to vote for Dhiman. Shergill also reminded them of the favours he had been doing for them when he was posted as ADC (Development) at Sangrur. Mann learnt about these details from Amarjeet Singh of Barroh on February 6. Similarly, Bachhi and Shergill went to Noorpur on February 4 and at Mastaan Singh's house, a number of persons of Noorpur arrived. Shergill impressed upon those persons to vote and support for Dhiman. Mann learnt about this from Jagjit Singh and Jasbir Singh when he went to Noorpur on February 6 about 2 p.m. Mann immediately filed a complaint through fax before the Chief Election Commissioner.

It was also pleaded in the petition that when Bachhi came to know about the complaints lodged by Mann, he destroyed the log book of his car to conceal the fact that he was touring Dirba during the assembly elections to canvass for votes for Dhiman. After the result was declared, Dhiman toured the villages falling in Dirba Constituency to congratulate and thank his voters and supporters. On April 4 and 5, Bachhi also accompanied him and visited about 33 villages in Bhawanigarh. While addressing meetings in villages, Dhiman specially thanked Bachhi for the sacrifice made by him. Bachhi also thanked the people for voting and supporting Dhiman. There was a news item in this regard in the Punjabi Tribune dated April 6. The respondent's conduct established that he had obtained assistance from Bachhi and Shergill both gazetted officers in the

service of the government. These acts constituted corrupt practices.

Two-three days after polling but much before the counting of the votes, DSP (Vigilance) and Security PSEB recorded Mann's statement while inquiring into the complaints made by him. Mann was not aware of the outcome of the inquiry.

According to the petitioner, the above facts established that the respondent had obtained assistance from Bachhi and Shergill for the furtherance of the prospects of his election. Hence the election was liable to be declared void as Dhiman had committed corrupt practices as detailed under Section 123 (7) of the Act.

REPLY OF THE WINNING CANDIDATE

Surjit Singh Dhiman, MLA filed written statement dated August 14, 2002 wherein he pleaded five preliminary objections (i) the election petition was not maintainable as the affidavit attached to it was not an affidavit in the eyes of law since it has not been properly verified; (ii) the election petition does not contain material facts on which the petitioner relied upon; (iii) the election petition was not a complete petition as the alleged complaints and the news items have not been attached therewith; (iv) the petitioner has no cause of action because Bachhi, though a gazetted officer was not in the service of the Government and Shergilll though in the service of the Government was not a gazetted officer and (v) contents of para 10 of the petition deserved to be deleted because it did not disclose the date, time and place when the petitioner's statement was recorded by Avtar Singh and thus did not disclose any cause of action.

In his detailed reply on merits, the respondent pleaded that he was not aware about the details of Bachhi being an Administrative Member of PSEB as copy of the Gazette Notification has not been placed on record. However, Bachhi was not in the employment of the Punjab Government as the Board was an autonomous body created under the Electricity (Supply) Act, 1948 (hereinafter referred to as **the 1948 Act**) and its employees are not in the service of the government.

As regards Shergill, to the best of the respondent's knowledge, a Deputy Director of any department of the Punjab Government was not a gazetted officer.

Dhiman specifically pleaded that he had never sought nor got any assistance for any purpose, much less for the furtherance of the prospects of his election, either from Bachhi or from Shergill. The contents of sub paragraphs (a), (b), (c) and (d) were individually and specifically denied.

The other allegations regarding taking help from Bachhi and Shergill were also denied. The allegations regarding destruction of the car's log book had been made on the basis of the information received from Varinder Singh, Assistant , PSEB. According to the respondent, Varinder Singh was the ardent supporter of the petitioner. The allegations also lacked material facts as regards date, place and time of the alleged destruction of the log book.

The allegations that Bachhi addressed meetings after the election were also denied. It was submitted that these activities cannot be taken into consideration. Under election law only activities of the returned candidate from the date of filing of the nomination papers till declaration of

the result were relevant.

ISSUES

After completion of the pleadings of the parties, the following issues were framed on October 24, 2002:-

1. Whether the Election Petition and the affidavit in support of the election petition are not properly verified, if so, its effect ? OPR
2. Whether the Election Petition lacks in material facts, if so, its effect ? OPR
3. Whether the copy of Election Petition supplied to the answering respondent is not a complete copy of the election petition, if so, its effect ? OPR
4. Whether the Election Petition does not disclose any cause of action as mentioned in preliminary objections No. 4 and 5 of the written statement, if so, its effect ? OPR
5. Whether the returned candidate obtained the assistance of Mr. Gurbachan Singh Bachhi Administrative Member of P.S.E.B. for the furtherance of the prospects of his election in the way and manner alleged in paragraph 4 and paragraphs 6-A to E and 7 of the election petition and thereby respondent committed corrupt practice as defined under section 123 (7) of Representation of People Act, 1951 ? if so, its effect. OPP

On October 17, 2003, an additional issue was framed which reads as under:-

"Whether the returned candidates obtained assistance of

Shri B.S. Shergill, Deputy Director, Panchayats, Punjab for the furtherance of his prospects of his election in the way and manner alleged in paras No. 5 and 7 of the election petition and thereby committed corrupt practice as defined under Section 123 (7) of the Representation of People Act ? OPP

Issues 1 to 4 were treated as preliminary issues.

On January 13, 2004, issues 1 to 4 were decided against the respondent.

PETITIONER'S EVIDENCE

In order to substantiate the allegations made in the petition, the petitioner filed a list of 54 witnesses but examined only 15. The petitioner's evidence commenced on March 5, 2004 and culminated on September 28, 2005.

Sumit Mukherjee, Under Secretary to the Election Commission of India, appeared as PW-1 and testified in respect of the complaints received by the Chief Election Commissioner of India from Baldev Singh Mann, during the process of election to the Dirba Assembly Constituency. The four complaints were dated February 4, 6 and 9, 2002 marked as PW1/A to PW1/D respectively. The said complaints were inquired into by the Chief Electoral officer, Punjab and the report of the Chief Electoral Officer including reports of the Department of Rural Development and Panchayats and Additional Secretary, department of Power are marked as PW1/E to PW1/G.

The four complaints (exhibits PW1/A to PW1/D) were in respect of the incidents already referred to in the pleadings. The details of these complaints need not be reproduced again. The Department of Rural Development and Panchayats reported that the matter had been investigated and was filed due to deficiency of proof.

Baldev Singh Mann-petitioner himself appeared as PW-2 and submitted his affidavit dated March 5, 2004 exhibited PW2/1. He was subjected to lengthy cross-examination by the learned counsel for the respondent on December 1, 2004. The other witnesses were Kirpal Singh of Ladbanjara Kalan (PW-3), Karnail Singh of Chhata Nanhera (PW-4), Ram Karan Singh of Rajpura (PW-5), Niranjan Singh of Kala Jhar (PW-6), Jasbir Singh of Channo (PW-7) Amarjit Singh of Barroh (PW-8), Joginder Singh of Rajpura (PW-9), Jagjit Singh of Nurpur (PW-10), Gurmeet Singh of Nidampur (PW-11). M.G. Acharya, I.A.S. Special Secretary, Department of Power, Punjab appeared as (PW-12), Harbhajan Singh Dhami, Superintendent, Financial Commissioner Rural Development and Panchayats, Punjab appeared as (PW-13), S.S.Multani, D.C.I.O. Intelligence Bureau, Jalandhar appeared as (PW-14) and Ranjit Singh, Press Reporter of Punjabi Tribune, Bhawanigarh appeared as (PW-15).

RESPONDENT'S EVIDENCE

In support of his case, Dhiman produced nine witnesses. He himself appeared as RW-1, Pritam Singh of Rajpura appeared as RW-2, Balwinder Singh of Bharro as RW-3, Karam Singh of Channo as RW-4, Malkiat Singh of Nadampur as RW-5, Tara Singh of Lad Banjara Kalan as RW-6, Malkiat Singh of Phumanwal as RW-7, Sukhjinder Singh of Sinthara as RW-8 and Siri Ram Singh of Chhanjali as RW-9.

ISSUE 5 (re: Bachhi's support to Dhiman).

Before embarking on an inquiry into the nature of Bachhi's support to Dhiman to see if it constituted a corrupt practice, it would be appropriate to first examine the real status of an Administrative Member of the Board and then see the nature of support and whether it constituted a corrupt practice in terms of Section 123 (7) of the Act. The crux of the petitioner's case was that both Bachhi and Shergill were in the service of the government and were gazetted officers. Obtaining or procuring their assistance in furtherance of Dhiman's electoral prospects constituted a corrupt practice as defined under section 123 (7) of the Act. A bare reading of the provisions of section 123 (7) of the Act would show that to constitute a corrupt practice Bachhi should be a person in the service of the government and also a gazetted officer.

According to the learned counsel for the election petitioner, it had been admitted by the respondent that Bachhi was a gazetted officer at the time of the election. Reference may be made to paragraph 4 of the preliminary objections pleaded in the written statement wherein the respondent stated that Bachhi, an Administrative Member of P.S.E.B. may be a gazetted officer but he was not in the service of the government. Similarly as regards Shergill, it was pleaded that he was Deputy Director, Panchayats but he was not a gazetted officer though he may be in service of the government.

Reference was made to notification dated December 24/28, 2001 issued by the Government of Punjab, Department of Power (Energy Branch) under the provisions of the 1948 Act read with rules 3 and 4 of the

Punjab State Electricity Board Rules 1959 vide which the Governor had been pleased to appoint Bachhi as Administrative Member of the Punjab State Electricity Board, Patiala with effect from the date from which he assumed his office. The notification was exhibited PW12/2. Therefore, there can be no ambiguity as regards the status enjoyed by Bachhi as a gazetted officer for a period of 2 years commencing from December 24, 2001. The elections had been held in January-February, 2002 and fell within this period. Therefore, the question that arises for consideration is whether every person in respect of whom there is a gazette notification becomes a gazetted officer ? Bachhi would have to be not only in the service of the government but also a gazetted officer.

Consequently, the petitioner referred to Section 14 of the Indian Penal Code which defines **'Servant of Government'**, and denotes any officer or servant continued, appointed or employed in India by or under the authority of Government. 'Government' denotes Central or State Government. Punjab State Electricity Board had been constituted by the State Government through a notification issued under Section 5 of the 1948 Act. Reference may also made to various provisions of the 1948 Act to examine if an Administrative Member of the Board would be in the service of the government.

Learned counsel for the petitioner referred to **Mathuradas Mohanlal Kedia and others v. S.D.Munshaw and others** AIR 1981 Supreme Court 53 to argue that true test for determination of the question whether a person is holding a civil post or was a member of the civil service was the existence of a relationship of master and servant between the State and the person holding the post. The existence of the relationship depended

upon the right of the State to select and appoint to the holder of the post, right of the State to suspend and dismiss, right to control the manner and method of his working and payment of his salary/remuneration.

In **Mathuradas Mohanlal Kedia's** case (supra) the question that had arisen was regarding the interpretation of Panchayat service but it was not an election petition. The question related to interpretation of various provisions of the Gujarat Panchayats Act, 1961. It was held that panchayat service constituted under the Panchayat Act was a civil service of the State. This judgment is clearly distinguishable and may not apply to Shergill's case as Shergill was admittedly a gazetted officer appointed as Deputy Director, Panchayats and was not a member of a Panchayat service. However, the definition of a civil post, discussed in Mathuradas Mohanlal Kedia's case, may be relevant to consider Bachhi's case. For this purpose one necessarily needs to go into the provisions of the 1948 Act and the rules framed thereunder.

Learned counsel for the election petitioner submitted that an Administrative Member of the Punjab State Electricity Board is appointed by the Punjab Government, his pay and salary are fixed by the State Government, though paid from the funds of the Board, he is required to act and discharge his duties in accordance with the Rules framed by the State Government, he is required to carry out the directions issued from time to time by the Government and in case of failure to follow he can be suspended and removed by the State Government.

At this stage, reference to the provisions of the 1948 Act would be useful. State Electricity Boards are constituted under Section 5 of this Act. Section 5 (4) (a) provides that there shall be one member, who has

experience of and has shown capacity in, commercial matters and administration. This person would obviously be an administrative member. Under Section 10 of the 1948 Act, the State Government may suspend any member of the Board. Lastly, under Section 81 all members and officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be "public servants" within the meaning of Section 21 of the Indian Penal Code. Therefore, it would be seen from the provisions of the 1948 Act that an Administrative Member is in the service of the government. However, whether he is a gazetted officer or not would be a different question altogether. In the case of Bachhi gazette notification had been issued appointing him as Administrative Member of the Board but his period was only for two years.

According to Baldev Singh Mann (PW-2), Bachhi had been Chairman of Central Cooperative Bank and also Director of Central Cooperative Bank, Sangrur. He was also Chairman of the Cooperative Wing of Shiromani Akali Dal (Badal) and had been running a business of Commission Agent at Bhawanigarh. Therefore, it is difficult to hold that Bachhi was a gazetted officer although he was in the service of the Government.

The question that has to now be taken up is regarding the status of Shergill, Deputy Director of Panchayats, Punjab. In Shergill's case there is not much controversy because he had earlier been Additional Deputy Commissioner, Sangrur and was a member of the Punjab Civil Service who during the election was holding the post of Deputy Director, Panchayats. Therefore, he was clearly both in the service of the government and also a

gazetted officer.

We may now move on to the specific instances of allegations of corrupt practices and after enumerating these incidents try and see if proof of allegations either through direct, circumstantial or corroborative evidence was forthcoming. The allegations are in respect of the several occasions when Bachhi had agreed to support Dhiman. These are extracted from the examination-in-chief of Baldev Singh Mann's sworn affidavit PW2/1.

(i)	January 23, 7 p.m.	On Dhiman's persuasion Bachhi agreed to support him in the Constituency. This incident had taken place in the presence of Kirpal Singh (PW-3). Mann was informed about this at Dirba by Karnail Singh (PW-4) and others.
(ii)	Between January 24-26	Dhiman and Bachhi personally contacted prominent persons of Dirba constituency for soliciting support for Dhiman.
(iii)		They joined campaigned for Dhiman. They were seen by Karnail Singh (PW-4) , Upinder Singh, Teja Singh Tiwana, Kashmira Singh, Darshan Singh, Nazam Singh and Labh Singh.
(iv)		Bachhi and Dhiman contacted Shamsher Singh and Harnek Singh. These persons had told Mann about this fact.
(v)	January 27-12 noon	Parkash Singh Badal, President (SAD)

		came to Dirba to address an election rally in Mann's support and Mann informed Badal about Bachhi's anti-party activities. This led to Bachhi's expulsion from the party.
(vi)	February 3	Bachhi and Dhiman visited Rajpura and met in Jarnail Singh's house in the presence of Ram Karan (PW-5). Jarnail Singh was the brother-in-law of N.S.Bhullar, AEE, P.S.E.B. Bhullar was also present there. Persons present in the meeting were asked to vote for Dhiman. Bachhi even threatened Jarnail Singh that in case his relatives did not vote and support Dhiman, then Bhullar could be in trouble. Mann was informed about this on the following day by Ram Karan (PW-5).
(vii)	February 4 at 2 p.m.	Bachhi and Dhiman met Niranjan Singh (PW-6) and Mehar Singh at their houses at Kala Jhar and asked them to vote and support Dhiman.
(viii)	February 3 at 3.30 pm	Bachhi had contacted Jasbir Singh (PW-7), Dhanvir Singh, Gogi Singh in the house of Jasbir Singh and asked them to vote in favour of Dhiman. Mann was informed about this by Jasbir Singh on the following day.

(ix)	February 5 at 5 p.m.	Bachhi held a meeting of voters of various villagers falling in Dirba Constituency. The meeting was also attended by Dhiman. Many employees of the Board were also present at that meeting. Bachhi with the consent of Dhiman had requested the persons present in the meeting to vote for Dhiman. The meeting was also addressed by Surjit Singh.
(x)	February 6 at 10 a.m.	Bachhi asked PSEB employees to supply material out of turn for releasing connection to the villagers of Chatha Nanhera and asked Khilu Singh to vote for Dhiman. On February 6 itself Bachhi visited Dirba and in the presence of Karnail Singh and Ruldu informed about the work done by him for Khilu and others. Mann learnt about this from Karnail Singh and Ruldu Singh at a rally addressed by Sukhbir Singh Badal at Dirba

The question to be considered is whether the above incidents constituted corrupt practices as defined under Section 123 (7) of the Act. The bare reading of this provision would show that the acts that have been declared corrupt practices are obtaining or procuring or abetting or attempting to obtain or procure, by a candidate or his agent, or by any other person with the consent of a candidate or his election agent, any assistance

(other than the giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of the Government.

Election time is a time of hectic activity. All over the constituency candidates and their supporters are moving about contacting people to canvass for votes and support. Under sub section 7, it is obtaining or procuring of assistance for the furtherance of the prospects of the candidate which constitutes main ingredients of corrupt practice. The assistance has to be procured from a person who is in the government service and who additionally is a gazetted officer.

In the present case, the petitioner relies on ten incidents in which Dhiman and Bachhi were seen together but the evidence is merely of villagers and consists of typical one-liners (Dhiman-Bachhi were together asking for vote and support). This is the typical sort of assistance Dhiman is alleged to have obtained from Bachhi. Apart from this there is one incident which Bachhi had helped one Khilu Singh to get electric connection.

Law is now well settled that the charge of a corrupt practice in a election petition should be proved almost like the criminal charge. The standard of proof is high and so is the burden of proof on the election petitioner. Mere preponderance of probabilities are not enough, as may be the case in a civil dispute. Allegations of corrupt practices should be clear and precise and the charge should be proved to the hilt as in a criminal trial by clear, cogent and credible evidence. Reference may be made to **Jeet Mohinder Singh Versus Harminder Singh Jassi** 1999 (9) Supreme Court Cases 386.

Furthermore, the success of a candidate who has won at an election should not be lightly interfered with. This principle was also

followed in **Ram Phal Kundu v. Kamal Sharma** JT 2004 (Suppl 2) SC 336. The evidence of corrupt practices presented by the petitioner is only supported by some individuals. The witnesses have given the dates and time when Bachhi and Dhiman were together canvassing for votes but such evidence does not possess a ring of certainty and truthfulness nor possess a high degree of proof, which is required to establish the allegations of corrupt practice.

As regards the grant of connection to Khilu Singh, there is no corroborative evidence in the form of application for connection and its sanction by the Board. This evidence could have been produced from the office of the concerned SDO but without it the allegations simply cannot stand. Resultantly, it is held that Bachhi though in the service of the government was not a gazetted officer and the evidence led at the trial to establish corrupt practice under Section 123 (7) of the act was insufficient to establish any corrupt practice. This is required a high degree of proof which was not forthcoming.

ADDITIONAL ISSUE (Re: Shergill's support to Dhiman)

The petitioner's case as regards Shergill extending support to Dhiman was that Shergill, during the relevant period was posted as Deputy Director, Panchayats at Chandigarh. On February 3, 2002, Dhiman along with Bachhi held a meeting at the house of Jarnail Singh at Rajpura and also went to Shergill's house who too belonged to that village. Shergill was present at his house at 12 noon. In the presence of witnesses, Joginder Singh (PW-9), Nachhattar Singh and Chand Singh of Rajpura, Dhiman requested Shergill to spare some time for helping him in the election as he had sufficient influence in the area. Initially Shergill showed his reluctance

but Bachhi succeeded in persuading Shergill to help Dhiman. In pursuance of this, Shergill and Bachhi went to Barroh on February 4 at 9 a.m. There in the house of Sarpanch Amarjit Singh (PW-8), they asked that prominent persons of the village be collected. Shamsher Singh, Nirmal Singh, Harchand Singh and Baldev Singh came there. Shergill requested them to support and vote for Dhiman in the elections. He also reminded them of favours that he had done to them when he was posted as ADC (Development) at Sangrur. The petitioner learnt about this from Amarjit Singh on February 6 when he visited Barroh on February 6. Similarly, Shergill and Bachhi went to Noorpur on February 4 and there in house of Sarpanch Mastan Singh they met to Jagjit Singh (PW-10), Jatinder Singh of Noorpur, Jasbir Singh of Barroh and Jasbir Singh and Santokh Singh of Noorpur. They impressed upon them to vote and support Dhiman in the elections. The petitioner came to know about this fact from Jagjit Singh and Jasbir Singh aforesaid when he visited Noorpur on February 6. The petitioner immediately made a complaint in this regard to the Chief Election Commissioner.

The crux of the election petition is that Dhiman was supported by Bachhi and Shergill who belonged to the Dirba Constituency. According to the petitioner, both Bachhi and Shergill were in the government service and were gazetted officers and, therefore, support given by them to Dhiman amounted to corrupt practices. The petitioner also tried to corroborate the various allegations of corrupt practice through his own complaints made to the Election Commission.

The question to be considered is whether the petitioner's evidence is strong enough to constitute corrupt practices. Before arriving at

any conclusion, it must be determined whether the petitioner's evidence is really worthy of credence to sustain a serious charge like using corrupt practices in the election. The result of the election shows that it was a closely fought one. The victory margin was less than 1000 out of nearly 70,000 votes polled. A candidate who loses by such a slight margin finds it hard to accept defeat. Therefore, he is bound to gather all kinds of facts and allegations whether substantiated or not, to accuse the winner of having employed corrupt practices. He is also willing to believe all sorts of stories. In the present case, this is what seems to have happened. Allegations are that the winner was moving from village to village asking for vote and in this process he had often bumped into Bachhi and Shergill canvassing for votes in favour of Dhiman.

To ask for a vote is not a corrupt practice. In Section 123 (7) of the Act, what has been declared to be a corrupt practice is obtaining assistance from any one who is in service of the government and is a gazetted officer. Casting a vote or asking for it does not amount to obtaining any assistance. When a candidate meets a voter and ask him to vote, the voter may say “yes” or “ no” or “may be”. In any event such conversation between a candidate and the voter would not amount to the voter giving assistance to the candidate. A persistent candidate or his agent may request the voters for vote and the voter may say “ yes” simply to escape the candidate's persistence. This would not amount to corrupt practice at all. There must be some positive and explicit proof on the part of voters belonging to categories mentioned in section 123 (7) (a) to (g) to constitute corrupt practice.

In the present case apart from the ipse dixit of witnesses, the

petitioner has failed to prove the ingredients of corrupt practices contained in Section 123 (7) of the Act. Therefore, even though Bachhi was in the service of the government, he was not a gazetted officer and Shergill was both in service of the government and also gazetted officer, the evidence of corrupt practices was not strong enough to upset the people's verdict in favour of Dhiman and against Mann. The petitioner has failed to prove the issue 5 and the additional issue framed on October 17, 2003.

There is no merit in this petition. The same is dismissed with costs which are quantified at Rs 10,000/- (Ten thousand).

December 2006 **(K.S.GAREWAL)**
prem **JUDGE**

Pronounced on 8th December, 2006